

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLARENCE L. HEARNS, et al.,

Plaintiffs,

v.

ANDREW WHISNAND, et al.,

Defendants.

Case No. 1:20-cv-00313-JLT (PC)

**FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION**

14-DATE DEADLINE

Clerk of Court to assign district judge.

Clarence L. Hearn filed a first amended complaint alleging that the defendants interfered with his mail and access to the court in violation of the First Amendment. (Doc. 13.) The Court screened the amended complaint and determined that Plaintiff failed to state a claim on which relief may be granted. (Doc. 17.) The Court granted Plaintiff leave to file a second amended complaint and advised that if he did not want to amend, he could instead file a notice of voluntary dismissal or forego amendment and notify the Court that he wishes to stand on his complaint. (*Id.* at 8.) The Court advised: “If the last option is chosen, the undersigned will issue findings and recommendations to dismiss the complaint without leave to amend, plaintiff will have an opportunity to object, and the matter will be decided by a District Judge.” (*Id.*)

Plaintiff filed a response electing to waive his option to amend his complaint a second time and to stand on his first amended complaint as screened. (Doc. 18.) Plaintiff added: “Please move forward with your scheduled issuing of your Report and Recommendation, to have this action

1 terminated.” *Id.*

2 Accordingly, and for the reasons set forth in the Court’s screening order (Doc. 17), the
3 Court RECOMMENDS that Plaintiff’s first amended complaint be DISMISSED for failure to
4 state a claim and DIRECT the Clerk of Court to close the case.

5 The Clerk of Court is DIRECTED to assign a district judge to this case for the
6 consideration of these findings and recommendations and case closure.

7 These Findings and Recommendations will be submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being
9 served with these Findings and Recommendations, the parties may file written objections with the
10 Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and
11 Recommendations.” The parties are advised that failure to file objections within the specified time
12 may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
13 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

14 IT IS SO ORDERED.

15
16 Dated: **December 27, 2021**

/s/ Jennifer L. Thurston
CHIEF UNITED STATES MAGISTRATE JUDGE